

Placement of Sentences Under U.S.S.G. § 2G2.2 – FY 2011

The tables on the following pages show the number and percentages of defendants receiving various types of sentences under U.S.S.G. §2G2.2. The first two tables show placement relative to the guideline range for defendants 1) in all criminal history categories (CHC) combined, and 2) in each criminal history category separately. Note that over 82% of defendants sentenced under this guideline are in CHCI, and that the majority of defendants in CHCI receive a sentence below the guideline range that was not sponsored by the government.

The next set of tables indicates placement within the range for offenders within CHCI who also receive some of the most common upward specific offense level adjustments under the guideline. Statistics available at the Commission's website indicate that the adjustments under (b)(2) (victim under the age of 12), (b)(4) (sadomasochistic or violent content), (b)(6) (use of a computer), and (b)(7)(D) (600 images or over), are applied in the vast majority of cases sentenced under the guideline. (Data available at:

http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Guideline_Application_Frequencies/2011/Use_of_Guidelines_and_Specific_Offense_Characteristics.pdf) These defendants receive non-government sponsored sentences below the guideline range at an even higher rate than other CHCI defendants. As judges and courts of appeals frequently find, these enhancements significantly increase the guideline range, apply in almost every case, and fail to distinguish between more and less culpable offenders.

The final tables show the number of defendants receiving various lengths of prison terms, including sentences that do not include a term of imprisonment. (Some of these sentences may have included alternative confinement, such as home confinement, as a condition of probation.) Tables are presented for defendants in each Criminal History Category, and for defendants in CHCI who receive various final offense levels. These data show that, while in FY2011 no defendants in a CHC greater than category I received sentences without imprisonment, some CHCI defendants with offense levels as high as 36 did receive sentences without imprisonment.

The data shown in these tables were extracted from the U.S. Sentencing Commission's 2011 Monitoring Dataset by Paul J. Hofer, Policy Analyst, Sentencing Resource Counsel Project, Federal Public and Community Defenders, and former Special Projects Director, U.S. Sentencing Commission. For a description of the Monitoring Datasets, see U.S. Sent'g Comm'n, Fifteen Years of Guideline Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform app. D at 1 (2004), and U.S. Sentencing Comm'n, 2010/2011 Guide to Publications and Resources 26-28 (2010). Although these particular analyses are not published by the Commission, the data underlying the tables are the same as the data used in the Commission's annual Sourcebook of Federal Sentencing Statistics. The data are publicly available at the Commission's website:

http://www.ussc.gov/Research_and_Statistics/Datafiles/index.cfm. Using standard statistical software, such as SAS or SPSS, the Monitoring Dataset can be used to generate a wide variety of tables and graphs beyond those published by the Commission.

Placement of Sentences Relative to Guideline Range

All Defendants Combined

	Frequency	Percent
Within Range	540	32.8
Above Range	24	1.5
Gov-Spon Below	290	17.6
Non-Gov Sponsored Below	791	48.1
Total	1645	100.0

Placement of Sentences Relative to Guideline Range

Defendants in Each Criminal History Category

		Placement of Sentences Relative to Guideline Range						Total
		1	2	3	4	5	6	
Within Range	Count	384	63	57	16	8	6	534
	%	28.6%	50.8%	53.8%	53.3%	53.3%	66.7%	32.8%
Above Range	Count	15	2	2	3	2	0	24
	%	1.1%	1.6%	1.9%	10.0%	13.3%	.0%	1.5%
Gov-Spon Below	Count	244	14	17	5	3	2	285
	%	18.1%	11.3%	16.0%	16.7%	20.0%	22.2%	17.5%
Non-Gov Sponsored Below	Count	702	45	30	6	2	1	786
	%	52.2%	36.3%	28.3%	20.0%	13.3%	11.1%	48.3%
Total	Count	1345	124	106	30	15	9	1629
	%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Position Relative to the Guideline Range

Defendants in CHCI Receiving the Four Most Common SOC Adjustments*

	Frequency	Percent	Valid Percent	Cumulative Percent
Within Range	222	26.4	26.4	26.4
Above Range	2	.2	.2	26.7
Gov-Spon Below	157	18.7	18.7	45.4
Non-Gov	459	54.6	54.6	100.0
Sponsored Below				
Total	840	100.0	100.0	

*Defendants received upward adjustments under 2G2.1(b)(2),(4),(6), and (7)(D);

Includes only defendants sentenced in 2011 under Guidelines Manual in effect later than FY2004

Position Relative to the Guideline Range

Defendants in CHCI Receiving the Three Most Common SOC Adjustments*

	Frequency	Percent	Valid Percent	Cumulative Percent
Within Range	269	26.1	26.1	26.1
Above Range	3	.3	.3	26.4
Gov-Spon Below	195	18.9	18.9	45.3
Non-Gov	564	54.7	54.7	100.0
Sponsored Below				
Total	1031	100.0	100.0	

*Defendants received upward adjustments under 2G2.1(b)(2),(4),and (6);

Includes only defendants sentenced in 2011 under Guidelines Manual in effect later than FY2004

Number of Defendants Receiving Sentences of Various Terms of Imprisonment
Defendants in Each Criminal History Category

Length of Prison Sentence Imposed	Criminal History Category						Total
	1	2	3	4	5	6	
No imprisonment	14	0	0	0	0	0	14
Up to 6 months*	30	3	0	0	0	0	33
6 mos to 1 year	15	0	0	0	0	0	15
1 to 2 years	99	4	2	0	1	0	106
2 to 5 years	471	14	13	5	0	0	503
5 to 10 years	475	58	42	11	5	1	592
More than 10 years	253	46	50	15	10	8	382
Total	1357	125	107	31	16	9	1645

* Offenders sentenced at the upper cutoff points are included in the lower category, i.e. "Up to 6 months" includes 6 month sentences.

**Number of CHCI Defendants Receiving Sentences of Various Terms of Imprisonment
With Various Chapter 2 Offense Levels**

Length of Prison Sentence Imposed	Chapter 2 Offense Level including Base Offense Level and Specific Offense Adjustments																
	18	20	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36
No imprisonment	0	1	1	0	1	1	0	2	2	1	0	2	1	0	0	0	2
Up to 6 months*	0	2	3	0	1	1	1	3	1	1	2	12	1	1	0	1	0
6 mos to 1 year	0	0	1	0	3	0	1	1	1	1	1	5	0	1	0	0	0
1 to 2 years	1	4	8	0	14	6	7	5	8	6	2	26	3	6	0	1	1
2 to 5 years	0	2	4	2	19	6	19	39	30	35	18	132	13	82	1	11	16
5 to 10 years	0	0	0	1	3	3	0	5	4	22	14	81	19	129	16	20	32
More than 10 years	0	0	0	0	0	1	0	0	0	0	1	2	2	12	0	19	14
Total	1	9	17	3	41	18	28	55	46	66	38	260	39	231	17	52	65

Length of Prison Sentence Imposed	Chapter 2 Offense Level including Base Offense Level and Specific Offense Adjustments											
	37	38	39	40	41	42	43	44	45	46	47	
No imprisonment	0	0	0	0	0	0	0	0	0	0	0	
Up to 6 months*	0	0	0	0	0	0	0	0	0	0	0	
6 mos to 1 year	0	0	0	0	0	0	0	0	0	0	0	
1 to 2 years	1	0	0	0	0	0	0	0	0	0	0	
2 to 5 years	19	2	0	19	0	0	0	0	1	0	0	
5 to 10 years	70	3	3	45	0	1	1	0	1	0	0	
Over 10 years	53	19	4	81	5	20	0	1	16	1	1	
Total	143	24	7	145	5	21	1	1	18	1	1	

* Offenders sentenced at the upper cutoff points are included in the lower category, i.e. "Up to 6 months" includes 6 month sentences.